

104TH CONGRESS
1ST SESSION

H. R. 582

To amend the Internal Revenue Code of 1986 to revise the rules for determining the employment status of individuals as employees or independent contractors.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1995

Mr. KIM introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to revise the rules for determining the employment status of individuals as employees or independent contractors.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Contrac-
5 tor Tax Fairness Act of 1995”.

1 **SEC. 2. CLARIFICATION OF EMPLOYMENT STATUS OF CER-**
2 **TAIN INDIVIDUALS; CODIFICATION OF SEC-**
3 **TION 530 SAFE HARBOR RULES.**

4 (a) GENERAL RULE.—Chapter 25 of the Internal
5 Revenue Code of 1986 (relating to general provisions ap-
6 plicable to employment taxes) is amended by adding at
7 the end the following new section:

8 **“SEC. 3510. DETERMINATION OF EMPLOYMENT STATUS.**

9 “(a) CERTAIN INDIVIDUALS NOT TREATED AS EM-
10 PLOYEES.—

11 “(1) IN GENERAL.—For purposes of this title,
12 in the case of an individual who meets the require-
13 ments of one of the subparagraphs of paragraph (2)
14 and who performs services pursuant to a qualified
15 agreement—

16 “(A) such individual shall not be treated as
17 an employee, and

18 “(B) the person for whom such services
19 are performed (hereafter in this subsection re-
20 ferred to as the ‘service-recipient’) shall not be
21 treated as an employer.

22 “(2) REQUIREMENTS.—

23 “(A) REALIZATION OF PROFIT OR LOSS.—

24 An individual meets the requirements of this
25 subparagraph if the individual can realize a
26 profit or loss as a result of the individual’s serv-

1 ices (in addition to the profit or loss ordinarily
2 realized by employees) performed for the serv-
3 ice-recipient.

4 “(B) SEPARATE PRINCIPAL PLACE OF
5 BUSINESS.—An individual meets the require-
6 ments of this subparagraph if the individual—

7 “(i) maintains his principal place of
8 business other than at a place of business
9 of the service-recipient, and

10 “(ii) has a significant investment in
11 facilities or tools which are used by such
12 individual to perform services of the type
13 performed for the service-recipient and
14 which are not typically maintained by em-
15 ployees.

16 “(C) MAKING SERVICES AVAILABLE TO
17 THE GENERAL PUBLIC.—An individual meets
18 the requirements of this subparagraph if—

19 “(i) the services performed by the in-
20 dividual for the service-recipient are made
21 available to the general public on a regular
22 and consistent basis, and

23 “(ii) the individual has performed
24 such services other than as an employee
25 (determined without regard to this sub-

paragraph) for at least 1 other service-recipient during such year or the preceding calendar year.

“(D) PAID ON COMMISSION BASIS, ETC.—

An individual meets the requirements of this subparagraph if—

“(i) the individual is paid exclusively on a commission basis, and

“(ii)(I) maintains his principal place of business other than at a place of business of the service-recipient, or

“(II) pays fair market rental value for his principal place of business if such place is at a place of business of the service-recipient.

“(3) QUALIFIED AGREEMENT.—For purposes of this subsection, the term ‘qualified agreement’ means a written agreement—

“(A) which specifies the services to be provided, the duration those services are to be provided, and the remuneration to be paid for those services,

“(B) which specifies that—

“(i) the service provider reasonably believes that such provider meets the re-

1 quirements under this section for being
2 treated not as an employee with respect to
3 such services and will not be treated by the
4 service-recipient as an employee with re-
5 spect to such services for Federal tax pur-
6 poses, and

7 “(ii) the service provider is aware of
8 the Federal tax obligations resulting from
9 such treatment, and

10 “(C) which specifies that the service-recipient
11 will maintain a separate accounting of the
12 income and expenses related to such agreement.

13 “(4) CONSEQUENCE OF FAILING TO MEET
14 TEST.—Failure to meet the requirements of this
15 subsection shall not be construed as indicating that
16 an individual is an employee of the service-recipient
17 for purposes of this title.

18 “(b) TERMINATION OF CERTAIN EMPLOYMENT TAX
19 LIABILITY.—

20 “(1) IN GENERAL.—If—

21 “(A) for purposes of employment taxes, the
22 taxpayer did not treat an individual as an em-
23 ployee for any period, and

24 “(B) in the case of periods after December
25 31, 1978, all Federal tax returns (including in-

1 formation returns) required to be filed by the
2 taxpayer with respect to such individual for
3 such period are filed on a basis consistent with
4 the taxpayer's treatment of such individual as
5 not being an employee,

6 then for purposes of applying such taxes for such
7 period with respect to the taxpayer, the individual
8 shall be deemed not to be an employee unless the
9 taxpayer had no reasonable basis for not treating
10 such individual as an employee.

11 “(2) STATUTORY STANDARDS PROVIDING ONE
12 METHOD OF SATISFYING THE REQUIREMENTS OF
13 PARAGRAPH (1).—For purposes of paragraph (1), a
14 taxpayer shall in any case be treated as having a
15 reasonable basis for not treating an individual as an
16 employee for a period if the taxpayer's treatment of
17 such individual for such period was in reasonable re-
18 liance on any of the following:

19 “(A) Judicial precedent, published rulings,
20 technical advice with respect to the taxpayer, or
21 a letter ruling to the taxpayer.

22 “(B) A past Internal Revenue Service
23 audit of the taxpayer in which there was no as-
24 sessment attributable to the treatment (for em-
25 ployment tax purposes) of the individuals hold-

1 ing positions substantially similar to the posi-
2 tion held by this individual.

3 “(C) Long-standing recognized practice of
4 a significant segment of the industry in which
5 such individual was engaged.

6 “(3) SUBSEQUENT TREATMENT BY TAXPAYER
7 OF INDIVIDUAL AS AN EMPLOYEE.—If—

8 “(A) an individual is deemed not to be an
9 employee of the taxpayer under paragraph (1)
10 for any prior period, and

11 “(B) such individual is treated by the tax-
12 payer as an employee for employment tax pur-
13 poses for any subsequent period,

14 then, notwithstanding paragraph (1), for purposes of
15 applying such taxes for such prior period with re-
16 spect to the taxpayer, the individual shall be deemed
17 not to be an employee.

18 “(4) PROSPECTIVE TERMINATION OF PRIOR
19 AUDIT SAFE HARBOR.—

20 “(A) IN GENERAL.—If, after an employ-
21 ment tax audit (and after providing the tax-
22 payer an opportunity for an appeal within the
23 Internal Revenue Service), the taxpayer is noti-
24 fied in writing by the Internal Revenue Service
25 that an individual (or individuals holding sub-

stantially similar positions) should be treated as employees for purposes of the employment taxes, paragraph (2)(B) shall not apply with respect to such individuals for any calendar month beginning more than 180 days after the date such notice is sent. The preceding sentence shall not apply if the audit referred to paragraph (2)(B) included an examination for employment tax purposes of individuals holding positions substantially similar to the positions held by the individual involved.

“(B) EMPLOYMENT TAX AUDIT.—For purposes of subparagraph (A), the term ‘employment tax audit’ means any audit by the Internal Revenue Service which—

“(i) was conducted solely for employment tax purposes, and

“(ii) included an examination for employment tax purposes of individuals holding positions substantially similar to the positions held by the individual involved.

“(5) CLARIFICATION OF SIGNIFICANT SEGMENT OF INDUSTRY.—In no event shall the ‘significant segment’ requirement under paragraph (2)(C) be interpreted to require a showing of the practice of

1 more than 25 percent of an industry. In applying
2 the preceding sentence, the Secretary shall allow tax-
3 payers maximum latitude in determining which in-
4 dustry is the appropriate industry for purposes of
5 applying such paragraph to the taxpayer.

6 “(c) DEFINITIONS.—For purposes of this section—

7 “(1) EMPLOYMENT TAX.—The term ‘employ-
8 ment tax’ means any tax imposed by this subtitle.

9 “(2) EMPLOYMENT STATUS.—The term ‘em-
10 ployment status’ means the status of an individual,
11 under the usual common law rules applicable in de-
12 termining the employer-employee relationship, as an
13 employee or as an independent contractor (or other
14 individual who is not an employee).”

15 (b) RULES TO APPLY FOR INCOME TAX PUR-
16 POSES.—Part I of subchapter B of chapter 1 of such Code
17 is amended by adding at the end the following new section:

18 **“SEC. 69. DETERMINATION OF EMPLOYMENT STATUS.**

19 “For purposes of this subtitle, an individual shall not
20 be treated as an employee of a person for any period if,
21 under the rules of section 3510, such individual is treated
22 as not being an employee of such person for such period.”

23 (c) CONFORMING AMENDMENT.—Section 530 of the
24 Revenue Act of 1978 is hereby repealed.

25 (d) CLERICAL AMENDMENTS.—

1 (1) The table of sections for chapter 25 of such
2 Code is amended by adding at the end the following
3 new item:

 “Sec. 3510. Determination of employment status.”

4 (2) The table of sections for part I of sub-
5 chapter B of chapter 1 of such Code is amended by
6 adding at the end the following new item:

 “Sec. 69. Determination of employment status.”

7 (e) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall take effect beginning on the first day of the
11 first calendar year beginning after the date of the
12 enactment of this Act.

13 (2) REPEAL OF SECTION 530.—The amendment
14 made by subsection (c) shall apply to periods in cal-
15 endar years beginning after the date of the enact-
16 ment of this Act.

17 (3) CONSISTENCY RULES.—In determining
18 whether the requirements of subsection (b)(1)(B) of
19 section 3510 of the Internal Revenue Code of 1986
20 (as added by subsection (a)) are met with respect to
21 any individual described in section 530(d) of the
22 Revenue Act of 1978 (as in effect on the day before
23 the date of the enactment of this Act), there shall
24 be disregarded any period for which such individual

1 (or any other individual holding a substantially simi-
2 lar position) was treated as an employee by reason
3 of such section 530(d).

4 **SEC. 3. COMPLIANCE PROVISIONS.**

5 (a) INCREASE IN PENALTY ON SERVICE-RECIPIENT
6 FOR FAILURE TO FURNISH FORM 1099'S TO INDEPEND-
7 ENT CONTRACTORS.—

8 (1) IN GENERAL.—Section 6722 of the Internal
9 Revenue Code of 1986 (relating to failure to file cor-
10 rect payee statements) is amended by adding at the
11 end the following new subsection:

12 “(d) INCREASE IN PENALTY WITH RESPECT TO
13 STATEMENTS FOR SERVICES.—In the case of any state-
14 ment required by section 6041(d) or section 6041A(e) to
15 show payments for services, subsection (a) shall be applied
16 by substituting ‘\$75’ for ‘\$50’ and subsection (c) shall be
17 applied by substituting ‘\$125’ for ‘\$100’.”

18 (2) EFFECTIVE DATE.—The amendment made
19 by paragraph (1) shall apply to statements the due
20 date for which (determined without regard to exten-
21 sions) is after December 31, 1996.

22 (b) SEPARATE LISTING OF PAYMENTS REPORTED ON
23 FORM 1099'S.—The Secretary of the Treasury or his dele-
24 gate shall modify the forms for returns of income tax so
25 as to require the reporting for information purposes on

1 a separate line of each amount for which the taxpayer re-
2 ceived a statement under section 6041(d) or section
3 6041A(e) showing payments for services.

4 (c) INFORMATION TO SERVICE-RECIPIENTS WITH
5 RESPECT TO INDEPENDENT CONTRACTORS.—The Sec-
6 retary of the Treasury or his delegate shall take such steps
7 as the Secretary determines appropriate to inform service-
8 recipients of—

9 (1) their obligations with respect to independent
10 contractors,

11 (2) the modifications made by this Act in the
12 rules for determining whether or not an individual is
13 an employee, and

14 (3) the increase made by this Act in the pen-
15 alties for failures to furnish correct statements re-
16 quired by sections 6041(d) and section 6041A(e) of
17 the Internal Revenue Code of 1986.

18 **SEC. 4. DEPARTMENT OF THE TREASURY REQUIRED TO**
19 **PROPOSE LEGISLATION.**

20 Not later than the date which is 180 days after the
21 date of the enactment of this Act, the Secretary of the
22 Treasury or his delegate shall submit a report to the Con-
23 gress proposing legislation which specifies objectively
24 measurable criteria for determining whether an individual
25 (not otherwise treated as not being an employee under sec-

1 tion 3508 or 3510(a) of the Internal Revenue Code of
2 1986) is an employee for purposes of such Code. It is the
3 intent of the Congress that such criteria allow taxpayers
4 maximum latitude in determining employment status.

5 **SEC. 5. REPORT ON LATITUDE GIVEN TAXPAYERS IN DE-**
6 **TERMINING EMPLOYMENT STATUS.**

7 Not later than the date which is 1 year after the date
8 of the enactment of this Act, the Secretary of the Treasury
9 or his delegate shall submit a report to the Congress de-
10 tailing the efforts being made by the Department of the
11 Treasury in giving taxpayers maximum latitude in deter-
12 mining employment status under section 3510 of the In-
13 ternal Revenue Code of 1986.

